

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Rulemaking Seeking to Allow)	MB Docket No. 16-410
The Sole Use of Internet Sources for FCC)	
EEO Recruitment Requirements)	

**COMMENTS OF
NCTA – THE INTERNET AND TELEVISION ASSOCIATION**

NCTA – The Internet & Television Association (“NCTA”)¹ hereby responds to the Public Notice² seeking comment on the petition for rulemaking in the above-referenced proceeding filed by Sun Valley Radio Inc. and Canyon Media Corporation (“Petitioners”), which urges the Commission to modernize one aspect of its Equal Employment Opportunity (“EEO”) rules.³ We agree with Petitioners that the Commission should “initiate a rulemaking to reform the broadcasting EEO recruitment rules to reflect modern career recruitment and job seeking practices that will allow broadcasters to rely on the world’s most powerful and ubiquitous recruitment source – the Internet.”⁴ Any such proceeding should also examine modernizing the identical EEO recruitment requirement that applies to cable operators and other multichannel video programming distributors (“MVPDs”). Under such modified rules, broadcasters and MVPDs would have the flexibility to rely exclusively on the Internet as a recruitment source

¹ NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation’s cable television households and more than 200 cable program networks. The cable industry is the nation’s largest provider of broadband service after investing over \$245 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to approximately 30 million customers.

² FCC, Public Notice, *Media Bureau Seeks Comment on Petition for Rulemaking Seeking to Allow the Sole Use of Internet Sources for FCC EEO Recruitment Requirements*, MB Dkt. No. 16-410, DA 16-1391 (rel. Dec. 15, 2016) (“Notice”).

³ See Petition for Rulemaking of Sun Valley Radio Inc. and Canyon Media Corp. at 1 (filed Dec. 12, 2016) (“Petition”).

⁴ *Id.* at 5.

when disseminating information about new vacancies, or to take other approaches that may include the Internet and/or other recruitment sources.

DISCUSSION

The Commission's EEO rules, adopted almost fifteen years ago, include a "three-pronged" approach to outreach.⁵ The first prong requires broadcasters and MVPDs to recruit for all full-time vacancies (except in exigent circumstances), and that recruitment sources used for each vacancy must be sufficient to "widely disseminate information concerning the vacancy."⁶ The Commission, however, prohibited regulated entities from using the Internet as the *sole* recruitment source for vacancies, because nearly a decade and a half ago it "was unable to conclude that Internet usage ha[d] become sufficiently widespread."⁷ As described in the *Petition*, the Commission's policy no longer reflects "the realities of today's employment marketplace."⁸ We agree that it is time for the Commission to modernize this requirement and permit broadcasters and MVPDs to deploy recruitment plans that are best designed to fill the vacancy, including plans that rely solely on Internet recruitment sources.⁹

Evidence that the digital age has taken hold is undeniable. In response to changed consumer behavior, newspapers large and small are shifting their operations from print to digital

⁵ See *In re Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Second Report & Order and Third Notice of Proposed Rulemaking, 17 FCC Rcd 24018 ¶ 14 (2002) ("*EEO Order*").

⁶ 47 C.F.R. §§ 76.75(b)(1)(i) (requirement applicable to MVPDs), 73.2080(c)(1)(i) (requirement applicable to broadcasters).

⁷ *EEO Order* ¶¶ 94, 99. The Commission explained that it "require[s] only that EEO recruitment sources be reasonably calculated to reach the entire community . . . [and that it] neither requires nor precludes the use of any number or type of source[.]". *Id.* ¶ 94. We note that on-air advertising is not mandated under the Commission's EEO rules, and the Commission should not propose adding such a requirement.

⁸ *Petition* at 1.

⁹ Beyond the first prong, the Commission's outreach requirements also mandate that regulated entities provide notice of each full-time vacancy to recruitment organizations that have requested such notice ("Prong 2"), and complete activities from a menu of longer-term recruitment initiatives (*e.g.*, scholarship programs, participation in job fairs, etc.) ("Prong 3"). The *Petition* only requests modernization of the first prong of the outreach requirement.

forms.¹⁰ Many once-popular magazines no longer offer a print edition.¹¹ Even the Encyclopaedia Britannica moved exclusively to a digital format almost five years ago.¹²

The *Petition* demonstrates that the Internet is widely available to most Americans, and that individuals without broadband access at home or via a mobile device can get online at libraries and other public spaces.¹³ Recent Commission actions underscore the reality that the public can be reached effectively by providing information online. For example, in the proceeding transitioning cable and other public inspection files online, then-Commissioner Pai stated,

This is just one example of a broader trend in media: the amount of content available online is exploding. Last year, the Commission took account of this change when we modified our contest rules to permit broadcasters to disclose the material terms of contests on a publicly accessible website. And today, we further recognize the digital revolution by requiring cable operators, DBS providers, and broadcast and satellite radio companies to post their public files online. . . . By posting the public file online, we will make it much easier for the American people to access that information. . . . You will now be able to access the file where you want, when you want, and on the Internet-connected device you want.

¹⁰ See, e.g., Derek Thompson, *The Print Apocalypse and How to Survive It*, The Atlantic, Nov. 3, 2016 (“Audiences are migrating from print bundles to mobile networks and aggregators.”), available at <http://www.theatlantic.com/business/archive/2016/11/the-print-apocalypse-and-how-to-survive-it/506429/>; Gerry Smith, *Newspapers Gobble Each Other Up to Survive Digital Apocalypse*, Bloomberg.com, Mar. 29, 2016 (“Newsrooms continue to experiment with strategies to draw readers and convince advertisers of their value. Newspaper publishers say they’re making progress with niche websites that may have national or global appeal. They’ve also gotten new sources of revenue from digital subscribers, sponsored events, newsletters and acquisitions of digital startups that have found an audience.”), at <https://www.bloomberg.com/news/articles/2016-03-29/newspapers-gobble-each-other-up-to-survive-digital-apocalypse>; Kelsey Sutton, *Wall Street Journal to Cut Staff as it Consolidates Print Edition*, Politico, Nov. 11, 2016 (announcing that the paper would “debut an overhauled and slimmed-down version of its print product [] in an effort to make the paper more financially viable”), available at <http://www.politico.com/media/story/2016/11/wall-street-journal-to-consolidate-print-edition-004843>.

¹¹ See, e.g., Jeffery Trachtenberg, *Self Magazine Going All Digital*, Wall St.J., Dec. 1, 2016, available at <http://www.wsj.com/articles/self-magazine-going-all-digital-1480604402>; Jeremy W. Peters, *U.S. News & World Report to End Monthly Publication*, N.Y. Times, Nov. 5, 2010, available at <http://www.nytimes.com/2010/11/06/business/media/06mag.html>.

¹² See Julie Bosman, *After 244 Years, Encyclopaedia Britannica Stops the Presses*, N.Y. Times, Mar. 13, 2012, available at https://mediadecoder.blogs.nytimes.com/2012/03/13/after-244-years-encyclopaedia-britannica-stops-the-presses/?_r=0.

¹³ See *Petition* at 5-6.

Indeed, with today's decision, one could say that we are helping to put the "public" back in the public file.¹⁴

Companies post jobs online because that is where job seekers are looking to find opportunities.¹⁵ As explained in the *Petition*, "[t]he Internet has transformed the way employers and job applicants seek out each other," with online recruiting being the norm for most companies.¹⁶ Indeed, online recruiting is also the norm for the federal government, with the U.S. Office of Personnel Management (OPM) explaining that Internet site USAJOBS.com "is the centralized site for most Federal agencies to post vacancy announcements."¹⁷ Entities subject to the Commission's EEO requirements should likewise have the flexibility to rely solely on Internet recruiting as a means to achieve "wide dissemination" to those seeking employment.

When the EEO rules were adopted, the Commission emphasized that it was providing "flexibility in implementing appropriate recruitment programs" for a regulated entity's "individual circumstances."¹⁸ An approach prohibiting reliance solely on online sources for posting job vacancies does not make any sense at all today, let alone provide that flexibility. If the rule is maintained for much longer, it will become increasingly harder, if not impossible, to comply as the vast majority of recruitment sources continue to shift to digital. As the *Petition*

¹⁴ See *In re Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report & Order, 31 FCC Rcd 526, 591 (Separate Statement of Commissioner Pai) (2016).

¹⁵ See *Petition* at 7 (citing a 2015 Pew Research Center study finding that "the Internet is a 'near universal resource' for many of today's job hunters").

¹⁶ See *id.* at 6-10.

¹⁷ U.S. Office of Pers. Mgmt., *Frequently Asked Questions, Employment, Where Can I Find Information About Federal Jobs?*, at <https://www.opm.gov/faqs/topic/employment/index.aspx?cid=5d9058d6-78fb-42a2-9d2a-9d14c22982f0&page=3> (last visited Jan. 23, 2017). USAJOBS.com states that it "helps recruit, retain, and honor a world-class government workforce for the American people" and that "USAJOBS serves as the central location to find job openings within hundreds of federal agencies and organizations." USAJOBS, *About USAJOBS*, at <https://www.usajobs.gov/Help/About/> (last visited Jan. 23, 2017).

¹⁸ EEO Order ¶ 94.

states, prompt action to revise the EEO rules would serve the public interest, including individual job seekers.¹⁹

CONCLUSION

In 2002, the Commission committed to “continue to monitor the viability of the Internet as a recruitment source” and stated that it would “consider petitions seeking to demonstrate in the future that circumstances have changed sufficiently to warrant a change in our policy.”²⁰ Circumstances have changed as the Commission anticipated. Accordingly, the Commission should launch a rulemaking to revise its EEO rules to allow broadcasters and MVPDs, if they so choose, to use the Internet as a sole recruitment source.

Respectfully submitted,

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¹⁹ See *Petition* at 10-11.

²⁰ *EEO Order* ¶ 99.